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OFFICE OF PETITIONS

In re Application of	:	
Lee Bolduc	:	
Application No. 10/692,282	:	DECISION ON PETITIONS
Filed: October 23, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 9494.18398	:	AND UNDER 37 CFR 1.78(a)(6)

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed November 15, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§120, 365(c) and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The amendment submitted with the instant petition is physically part of the petition and, as such, does not comply with 37 CFR §§ 1.121, 1.53, or 1.4(c). Therefore, the amendment as drafted is unacceptable and is not considered a proper reference under 37 CFR 1.78(a)(2)(i). Note that 37 CFR 1.121 states amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the USPTO.

In view of the above, a substitute amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3) and (a)(6), must be submitted. No further petition fee is due.


Further correspondence with respect to this matter should be addressed as follows:

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